

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT
RELATIONS BOARD

OTTUMWA TRANSIT AUTHORITY,)	
Public Employer,)	
)	
and)	CASE NO. 5595
)	
OVER THE ROAD, CITY TRANSFER DRIVERS,)	
HELPERS, DOCKMEN, WAREHOUSEMEN,)	
INSIDE WORKERS, STATE, COUNTY AND)	
MUNICIPAL EMPLOYEES, TEAMSTERS 147,)	
Petitioner.)	

PROPOSED DECISION AND ORDER

Charles E. Boldt, Administrative Law Judge. This matter arises from a combined petition filed by the Over the Road, City Transfer Drivers, Helpers, Dockmen, Warehousemen, Inside Workers, State, County and Municipal Employees, Teamsters 147 (Union or Teamsters) on October 4, 1996 with the Public Employment Relations Board (PERB or Board). The petition sought unit determination and representative certification by the Teamsters for certain employees of the Ottumwa Transit Authority (OTA). This matter relates to the unit determination portion of the petition which was filed pursuant to §13, Public Employment Relations Act (Act), Chapter 20, Code of Iowa (1995)¹ and subrules 4.2 and 4.4 of the Rules of PERB, 621 Iowa Administrative Code.

The petition sought a bargaining unit comprised of full-time and part-time bus drivers working exclusively in the City of Ottumwa. The OTA, in response to the petition, adopted a position that the appropriate bargaining unit would be comprised of all drivers and bus cleaners of the OTA. At hearing, the parties stipulated to the inclusion of the bus cleaners.²

¹ All statutory citations will be to the Code of Iowa (1995).

² The Teamsters unit would include fifteen employees and the OTA unit would include forty-nine employees.

A hearing was held before me on December 30, 1996 in Des Moines, Iowa. The OTA was represented by Renee Von Bokern and the Teamsters were represented by Neil A. Barrick. Both parties had full opportunity to present evidence and testimony. Neither party elected to file a post-hearing brief.

Based on the entire record in this matter, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The OTA is a transit system which provides public transport. The OTA is governed by a three-member independent board which is selected by the Mayor of Ottumwa and approved by the Ottumwa City Council. The OTA Board hires a Transit Administrator who has three administrative assistants and a bus maintenance technician to assist in administrative and supervisory functions. The OTA has forty-nine bus driver positions and three bus cleaner positions. The OTA Board has authority to set operational policies, personnel policies, and enter contracts for the operation and maintenance of the transit system.

The OTA came into existence in 1972. From 1972 until 1985, the OTA contracted with a private company for the operation of the Ottumwa city buses. Employees of the private company were organized for purposes of collective bargaining under the Amalgamated Transit Union (ATU). In 1985, the private company operating the Ottumwa city transit system went out of business and the OTA became the direct operator of the Ottumwa city transit system. The bargaining unit represented by ATU was disbanded. Some employees of the private transit company became employees of the OTA.

The OTA, in 1985, devised a personnel manual titled, "Working Agreement for All Drivers." The manual contains sections with policies governing grievance procedures, discipline, seniority, bidding, layoffs,

leaves of absence, vacations, holidays, sick leave, wage rates, overtime, insurance and other personnel issues. The manual was patterned after the contract ATU had with the private company with which OTA had previously contracted for Ottumwa city transit services. The manual can only be amended by approval of the OTA Board. The manual was amended in 1992 to reflect an expansion of the OTA operations. Input from employees on desired changes in the manual was accepted by the OTA Board for inclusion in the manual. In October, 1996, employees who operate Ottumwa city buses sought additional changes in the portion of the manual governing filling of vacancies. These changes were approved by the OTA Board in October, 1996, but they have not yet been incorporated into the written manual even though the changes have been put into effect.

Prior to 1992, the OTA was primarily a city transit system operating buses in the city of Ottumwa. Since 1992, OTA has expanded to a regional transit system providing three types of services: city transit, paratransit, and regional transit.

The city transit service provides mass transit in the city of Ottumwa. Buses travel on fixed routes on designated streets known as headways. The routes provide that a bus will pass a specific point on the route every one-half hour to one hour each day, Monday through Saturday.

Paratransit services provide transit for disabled people. Clients call and reserve a ride. Transport is from the curb at the point of origin to the curb at the point of destination. This type of service is called demand-response service. It is operated Monday through Saturday.

Regional transit provides transportation services of the demand-response variety as well as some fixed route services. Fixed routes in regional transit are less frequent, two to three times per day (e.g.

morning, noon, evening). These fixed routes travel a designated corridor during designated times and are called a subscription service.

The OTA contracts with various customers for the provision of these services. Included in the list of customers with which OTA has contracted are: the Headstart Program, the Area Agency on Aging, certain sheltered workshops, and the Ten-Fifteen Regional Transit Agency (RTA).

Employees hired by OTA as a result of the contract between the OTA and the RTA are at issue here.

The RTA was created in 1992 under the auspices of a 28E agreement between the Boards of Supervisors of a ten-county area identified as Iowa Department of Transportation Area 15. The ten counties in Area 15 are those contiguous to Wapello County in which Ottumwa is the county seat. The ten counties are: Wapello, Lucas, Wayne, Monroe, Van Buren, Jefferson, Mahaska, Keokuk, Appanoose, and Davis. These ten counties cover approximately five thousand square miles.

The RTA is governed by a Policy Board. The RTA Board sought bids through an open bidding process for the provision of transportation services throughout the ten-county area. The OTA submitted a bid according to the RTA specifications and prevailed under the bidding process. The OTA contracted with the RTA in 1992 for the provision of transit services in the ten-county region and has maintained that contract since 1992.

Pursuant to the OTA/RTA contract,³ its duration is through June 30, 1998 and may be extended or renewed in writing through mutual agreement and concurrence by the Iowa Department of Transportation for periods not to exceed two years. Service is for public transport, 6 a.m. to 6 p.m., Monday through Friday, except for six designated holidays. The OTA must

³ City Exhibit 2.

notify and receive approval from RTA if changes in service hours are made. Service is to include demand-response within the ten-county region as well as medical shuttles to Des Moines, Mount Pleasant, or Iowa City designed around the needs of older Iowans for congregate meals, grocery and medical transportation, Headstart attendance centers and the disabled. Service is also by subscription along routes as designated by customers.

Access to the service must be non-discriminatory and is obtained on 24-hour advanced notice to OTA or through Seneca AAA (Area Agency on Aging) Site Managers.

The OTA/RTA contract provides recommended contributions for services as well as a fare structure. "General public" fares belong to the RTA, while "suggested contributions" belong to Seneca AAA. The OTA reports both types of revenues to RTA as passenger revenues for RTA's reporting requirements.

The OTA/RTA contract provides that the RTA will supply the vehicles for the provision of services. RTA contracted for vehicle maintenance and vehicle insurance.

Under the OTA/RTA contract, the OTA is an independent contractor and the drivers for RTA contracted services are employed by the OTA. Scheduling and dispatch support is provided by OTA. The OTA provides training for operational personnel. The OTA disseminates information about regional transit services. The OTA maintains accounting and records of services rendered and revenues collected. The OTA must provide quarterly reports to the RTA. The OTA must have an independent audit of its services under the OTA/RTA contract and provide a copy of the audit report to the RTA. The OTA must permit inspection of its vehicles, services, books, and records to the RTA upon request. The OTA must notify the RTA of any unavoidable interruption or delay in service.

The OTA must notify the RTA of any passenger-related incidents. The OTA/RTA contract identified assistance and compensation that RTA will provide to OTA for providing the services under the contract. The OTA is empowered to apply for state and federal subsidies on behalf of the RTA. The OTA/RTA contract provides for monthly reporting and billing to the RTA and other required reporting. The OTA/RTA contract may be terminated by either party upon thirty days' prior notice and may not be assigned to another party, nor may any part of the services be contracted out to another party except temporarily under emergency circumstances.

Supervision of OTA bus drivers is done by the administrative assistants (AA). One AA oversees the Ottumwa city bus drivers. Another AA oversees the regional bus drivers. The third AA bifurcates between both the city and regional bus drivers. The bus cleaners are overseen by the bus maintenance technician.

There are forty-six bus driver positions and three bus cleaner positions. Of the forty-six bus driving positions, six positions are designated as city bus driving positions, thirty-two are designated as regional bus driving positions, and eight positions are designated as split between city and regional bus driving. Four positions (all city positions) are full-time positions; all others are part-time positions. Of those positions which are designated as split positions, some drivers have city route responsibilities as their primary driving responsibilities and regional driving is secondary. Other drivers have regional driving as their primary responsibility and city driving is secondary. The three cleaners split their time between cleaning city buses and regional buses. They clean city buses two days per week and regional buses one day per week.

The city buses are owned by the city of Ottumwa. They are thirty-five feet long, considered heavy-duty buses, and are equipped with air brakes. These buses have an "OTA" logo. The RTA buses are twenty-five feet long, considered light-duty, and do not have air brakes. They are owned by the RTA and have a "10-15 Transit" logo. The paratransit buses are Dodge Caravans retrofitted to meet Americans with Disabilities Act standards. They have an "OTA L.I.F.T.S." logo. On some occasions, OTA buses have been used for RTA trips and RTA buses have been used for OTA purposes.

All city buses and paratransit vehicles are routinely kept at the OTA garage in Ottumwa. Twelve RTA buses of a fleet of thirty-nine RTA buses are routinely kept at the OTA garage. The remainder of the RTA fleet of vehicles are kept at other centralized locations around the region or are kept at drivers' homes. Routine and small maintenance functions to RTA vehicles are done at locations near the vehicles' territory. Larger maintenance jobs, such as alignment or lift repair, are done at the OTA garage or maintenance shops in Ottumwa.

Hiring of bus drivers is done by the OTA. Although the form has been modified over time, all drivers fill out the same application form. The hiring procedure is the same for all drivers and all drivers have the same probationary period. The Transit Administrator looks for the same attributes in all potential drivers; i.e., skill, driving record, and disposition for working with people. The orientation is the same for all drivers.

All drivers must have a valid Commercial Driver's License (CDL). The CDL for drivers of city buses must be a Class "B" with endorsements for air brakes and passengers. The CDL for drivers of RTA buses must be a Class "C" with passenger endorsement only. Drivers may operate vehicles with a lower rating than their licensure, but they may not

operate a vehicle requiring a higher rating of licensure than they possess.

All drivers work under the same personnel policy manual. All drivers are paid from the same wage scale. All drivers receive the same holidays. Only full-time drivers receive vacation. All drivers have the same seniority system based on the employee's last date of hire with the OTA. Seniority is used to bid on preference of runs and selection of leave time. An employee moving from one facet of OTA (city, regional, paratransit, split) to another does not receive a new seniority date.

Transfer is a function of training versus seniority. If a vacancy occurs, the position is first offered to those employees who are trained to do the job. If none of that class of employee wants the position, the position is then offered to other OTA employees who are not trained in the position. The OTA will then train the employee for the position. If no OTA employee wants the position, the OTA will then advertise the position to non-OTA applicants. This is the policy adopted by the OTA Board in October, 1996 at the request of the city drivers. City drivers are trained on all city routes. RTA drivers are trained on the routes in the county or counties in which they work. There is very little cross-training of drivers of the OTA.

If a driver is temporarily absent, the employee who is trained for the route and is available to take the route and who is scheduled for the lowest number of hours will fill in for the absent driver.

Layoffs, in case of a termination of the OTA/RTA contract, would take place in the following order: first laid off would be drivers who drive regional transit only; second laid off would be drivers who split between city and regional transit; unlikely to be affected would be city-only drivers.

The Transit administrator has monthly meetings with the city bus drivers. There has been only one meeting for all drivers. City, regional and split drivers have opportunities to interact in the administrative offices, at the OTA garage, and while refueling their vehicles.

CONCLUSIONS OF LAW

The issue is determination of the appropriate bargaining unit of bus drivers and bus cleaners of the Ottumwa Transit Authority.

Section 13(2) of the Act provides, in relevant part:

In defining the unit, the board shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location, and the recommendations of the parties involved.

The OTA argued that the business of the OTA is the transportation of people. The OTA admitted that prior to 1992, there was a historical organization of municipal bus drivers; but that, since contracting with the RTA in 1992, there has been a broader grouping including a ten-county area. The OTA maintained that it remains the employer and that the only difference is that service is provided outside the city of Ottumwa. The OTA asserted that they have multiple clients but only one service.

The OTA argued that it is a growing public employer but the same service, transportation, is provided. The OTA discounted any relevance of differences in equipment used to provide the service or the geographic location in which the service is provided.

The OTA stated that a finding of separate bargaining units of city transit employees and others would be a disservice to the employees, deemed by the OTA to be a single group, and the OTA. In support of the OTA's contention that the employees belong to a single group appropriate

for a determination of a single bargaining unit, the OTA cited factors including one set of policies and procedures governing all OTA employees (the Working Agreement), the same terms and conditions of employment, common supervision, provision of the same service, and contact among employees throughout the OTA.

The Teamsters argued that the issue is not whether the OTA is the employer of all of the employees at issue, but whether all of the employees belong in the same bargaining unit. The Teamsters maintained that it is common for a single employer to have multiple bargaining units based on departmental divisions.

The Teamsters asserted that the history and extent of employee organization clearly militates in favor of a bargaining unit of bus drivers and bus cleaners who work within the city of Ottumwa and not the larger region. The Teamsters argued that when there was earlier union representation, the bargaining unit was confined to bus drivers in the city of Ottumwa that dealt with the issues arising from the drivers' employment.

The Teamsters also argued that geographic location favors a bargaining unit comprised of city bus drivers and cleaners. The geography is of a single community versus a much larger ten-county area.

The Teamsters averred that even the principles of efficient administration of government do not hamper the determination of a bargaining unit of city bus drivers and cleaners. Already, the OTA must maintain separate records and books governing revenues and equipment for the services provided on behalf of the RTA, the Teamsters argued. The Teamsters also pointed to separate funding requests between the OTA and the RTA.

The Teamsters also maintained that community of interest factors favor a determination of a bargaining unit of city bus drivers and cleaners.

In considering the factor of the principles of efficient administration of government, PERB has consistently described this factor as requiring:

. . . the designation of the fewest number of bargaining units possible consistent with the requirement that employees be permitted to form organizations of their own choosing to represent them in a meaningful and effective manner.⁴

While the unit sought by the Teamsters would appear to be supported by allowing employees to form an organization of their own choosing, the nature of the unit sought blurs the lines of distinction that the Teamsters advance as supportive of their position. Of the twelve drivers sought for inclusion in the bargaining unit sought by the Teamsters, only six work exclusively within municipal transit. The other six drivers share duties between municipal and regional transit. Furthermore, the three bus cleaners which the parties have stipulated for inclusion in the bargaining unit also split their duties between municipal and regional transit.

The Teamsters' argument that separate books, records and funding requests are maintained is valid. However, nothing in the record suggests that employee payroll and administration of employee benefits is separate and distinct between municipal and regional employees or employees that split their time between municipal and regional transit duties.

It must also be noted that the bargaining unit sought by the Teamsters is not inclusive of all of the bus drivers who split their time between municipal and regional transit operations.

⁴ City of Lake Mills, 96 PERB 5499, citing Anthon-Oto Community School District v. PERB, 404 N.W.2d 104, 143 (Iowa 1987).

The determination of a bargaining unit as suggested by the OTA potentially avoids an undue proliferation of bargaining units. I conclude that the factor of the principles of efficient administration of government favors determination of a bargaining unit comprised of all bus drivers and bus cleaners of the OTA.

The community of interest factor is determined by examination of duties, skills, qualifications, methods of compensation, benefits, hours of work, common supervision, employee contact, and transfers among the classifications or positions to be included in the bargaining unit.⁵ The duties and skills of all OTA bus drivers are very similar as evidenced by the factors looked at in their hiring; i.e., skill, driving record, and disposition for working with people. There is some differentiation in qualifications through the different levels of CDL and attendant endorsements. All drivers have a common pay scale. The benefit differentiation noted in the record was between full-time employees and part-time employees, but not between municipal and regional transit employees. Differences in hours of work are similarly bifurcated between full-time and part-time employees. The table of organization demonstrates some differentiation in lines of supervision, but these lines are indistinct when considering the administrative assistant that supervises drivers in both aspects of the OTA and the bus maintenance technician that supervises the bus cleaners that work in both aspects of the transit operation. All supervisory lines coalesce at the level of transit administrator. Employee contact between employees that work exclusively in the municipality and those that work exclusively outside of Ottumwa is minimal, but the number of employees that split their employment minimizes this factor such that it cannot be

⁵ See, e.g., City of Lake Mills, 96 PERB 5499; Des Moines Independent Community School District, 84 PERB 2498; Dubuque Community School District, 80 H.O. 1204 and 1678.

determinative. Transfers between municipal and regional transit bus drivers is a new phenomenon at the OTA. Still, the employees who work in both municipal and regional transit cloud this element of community of interest.

I conclude that community of interest factors support determination of a bargaining unit comprised of all bus drivers and bus cleaners of the OTA.

The Teamsters have made the point that the history and extent of employee organization is limited to bus drivers in the municipal area of Ottumwa. This extent of organization ended in 1985 when the bus drivers became public employees. While the "Working Agreement" was patterned after the ATU contract, the bargaining unit defined under the National Labor Relations Act ceased to be. When the OTA underwent significant expansion in 1992 by contracting with the RTA, the OTA amended the "Working Agreement" to be inclusive of all of the bus drivers. This inclusiveness, along with coordination of services between the municipal and regional transit systems, mitigates the exclusiveness that was present prior to 1992 for those bus drivers who were exclusively aligned with municipal transit. The expansion of the OTA and the efforts to include those drivers assigned to regional transit duties would be consistent with amendment of the previously existing unit of OTA bus drivers.

The geographical location also supports a determination of a bargaining unit comprised of all bus drivers and bus cleaners of the OTA. The bargaining unit sought by the Teamsters would effectively carve out the central local from the ten-county area for organizational purposes; thus, creating a donut effect. This would leave the surrounding area as a separate bargaining unit or susceptible for breakup into specific county bargaining units. The Iowa Department of

Transportation and the coalition of county governments have kept this ten-county area as a single unit. The logic of maintaining this cohesive area as a single unit for transit bargaining is sound.

As another relevant factor, the size of the unit proposed by the OTA is forty-nine positions with only two job classifications. This unit is not so large, nor its components so diverse, as to make negotiation for wages, hours, and other conditions of employment untenable.

Having given due consideration to the relevant factors for unit determination, I conclude that a preponderance of the evidence supports determination of a bargaining unit of all bus drivers and bus cleaners of the OTA.

ORDER

IT IS HEREBY ORDERED that the appropriate bargaining unit for employees of the Ottumwa Transit Authority is:

INCLUDED: All bus drivers and all bus cleaners of the Ottumwa Transit Authority.

EXCLUDED: Transit Administrator, Administrative Assistants, Bus Maintenance Technician and all others excluded by Section 4 of the Act.

DATED at Des Moines, Iowa this 17th day of January, 1997.

PUBLIC EMPLOYMENT RELATIONS BOARD

Charles E. Boldt

Charles E. Boldt
Administrative Law Judge